SECTION .0600 - DECLARATORY RULINGS AND PETITIONS FOR RULEMAKING

15A NCAC 07J .0601 DECLARATORY RULINGS: GENERALLY

At the request of any person aggrieved, as defined in G.S. 150B-2(6), the Coastal Resources Commission may issue a declaratory ruling as provided in G.S. 150B-4.

History Note: Authority G.S. 113A-124; 150B-4;

Eff. June 1, 1979;

Amended Eff. October 1, 1992; October 1, 1988.

15A NCAC 07J .0602 PROCEDURE FOR REQUESTING DECLARATORY RULINGS

- (a) All requests for a declaratory ruling shall be filed with the Director, Division of Coastal Management, Department of Environment and Natural Resources (DENR), 400 Commerce Avenue, Morehead City NC 28557, and also the Attorney General's Office, 9001 Mail Service Center, Raleigh NC 27699-9001. All requests shall include the following: the aggrieved person's name and address; the rule, statute or order for which a ruling is desired; and a statement as to whether the request is for a ruling on the validity of a rule or on the applicability of a rule, order or statute; and certified mail receipts showing the request was sent to the owners of property adjacent to the property that is the subject of the declaratory ruling.
- (b) A request for a ruling on the applicability of a rule, order, or statute shall include a description of the factual situation on which the ruling is to be based. A request for a ruling on the validity of a commission rule shall state the aggrieved person's reasons for questioning the validity of the rule. A person may ask for both types of rulings in a single request. A request for a ruling shall include or be accompanied by:
 - (1) a statement of facts proposed for adoption by the Commission; and
 - (2) a draft of the proposed ruling.

History Note: Authority G.S. 113A-124; 150B-4;

Eff. June 1, 1979;

Amended Eff. June 1, 2005; October 1, 1992; November 1, 1991; July 1, 1990; May 1, 1990.

15A NCAC 07J .0603 PROCEDURES: CONSIDERING REQUESTS FOR DECLARATORY RULINGS

- (a) The Commission hereby delegates to the Chairman the authority to grant or deny requests for declaratory rulings and to determine whether notice of the declaratory ruling request should be provided to anyone other than the adjacent property owners. The Division of Coastal Management shall review each request for a declaratory ruling and shall prepare a recommendation for the Chairman as to whether the Commission should consent to issue a ruling or whether for good cause the request for a declaratory ruling should be denied. The Chairman shall deny a request for declaratory ruling on finding that:
 - (1) the requesting party, any other directly affected persons, and the Division of Coastal Management cannot agree on a set of undisputed facts sufficient to support a meaningful ruling;
 - (2) the matter is the subject of a pending contested case hearing; or
 - (3) no genuine controversy exists as to the application of a statute or rule to a proposed project or activity.
- (b) After consenting to issue a ruling, the Commission shall place the declaratory ruling on the agenda for its next regularly scheduled meeting. The Commission shall provide notice of the declaratory ruling proceeding to the requesting party, the adjacent property owners and other persons to whom the Commission decides to give notice no less than 10 days before the date for which the declaratory ruling is set. The requesting party and other persons to whom the Commission decides to give notice shall be allowed to submit written comments concerning the proposed declaratory ruling.
- (c) If a ruling is to be issued, the Chairman shall decide whether notice should be given to persons other than the party requesting the ruling and the adjacent property owners. In making such a decision, the Commission shall consider such factors as: whether additional public participation would aid the Commission in reaching a decision; whether any persons have requested in writing to be notified of proposed declaratory rulings; whether the property or personal rights of other persons might be directly affected by the requested ruling; and whether the proposed ruling would affect the application and interpretation of a rule in which other persons might be interested. All persons receiving notice of the declaratory ruling, including all members of the public who respond to a published notice of the proposed ruling, may submit written comments

to the Commission concerning the proposed declaratory ruling pursuant to Paragraph (b) of this Rule at least five days prior to the date of the proposed ruling; all such comments shall be provided to the Commission and shall be included in the record of the declaratory ruling.

- (d) Unless the Department waives the opportunity to be heard, it shall be a party to any request for declaratory ruling. The requesting party and the Department shall each be allowed 30 minutes to present oral arguments to the Commission. Neither party may offer testimony or conduct cross-examination before the Commission. The declaratory ruling shall be determined on the basis of the statement of undisputed facts submitted by the parties.
- (e) The Commission will keep a record of each declaratory ruling, which will include at a minimum the following items:
 - (1) the request for a ruling;
 - (2) any written comments by interested parties;
 - (3) the statement of undisputed facts on which the ruling was based;
 - any transcripts of oral proceedings, or, in the absence of a transcript, a summary of all arguments;
 - any other matter considered by the Commission in making the decision; and
 - (6) the declaratory ruling together with the reasons therefore.
- (f) A declaratory ruling is binding on the Commission and the person requesting it unless it is altered or set aside by the court. The Commission may not retroactively change a declaratory ruling, but nothing in this Section prevents the Commission from prospectively changing a ruling.
- (g) A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a contested case. Unless the requesting party consents to the delay, failure of the Commission to issue a ruling on the merits within 60 days of the request for such ruling shall constitute a denial of the request as well as a denial of the merits of the request and shall be subject to judicial review.

History Note: Authority G.S. 113A-124; 150B-4;

Eff. June 1, 1979;

Amended Eff. October 1, 1992; October 1, 1988.

15A NCAC 07J .0604 FEDERAL ACTIVITIES

- (a) At the request of any federal agency or of any state or local co-sponsor of a federal project with the written concurrence of the federal agency, the Commission shall issue a declaratory ruling concerning the consistency of a proposed federal activity with North Carolina's coastal management statutes and regulations unless the Chairman determines that no genuine controversy exists as to the application of a statute or rule to a proposed federal activity.
- (b) The request for ruling shall include:
 - (1) a statement identifying the rule, statute or order at issue;
 - (2) certified mail receipts indicating that notice of the request for ruling was sent to the owners of property adjacent to the property on which the proposed federal activity will take place;
 - a statement of facts proposed for adoption by the Commission and any documentary evidence supporting the proposed statement of facts;
 - (4) a draft of the proposed ruling;
 - a statement indicating that the Division of Coastal Management has preliminarily determined that the project may be inconsistent with a coastal management statute or regulation; and
 - (6) a statement identifying the factual issues in dispute between the Department and the federal agency.
- (c) The Commission shall provide notice of the declaratory ruling proceeding to the adjacent property owners and to persons who have requested notice of proposed rulings. Notice shall be published in a newspaper of general circulation in the area of the proposed federal activity 10 days prior to the Commission's consideration of the declaratory ruling. Any person may submit written comments on the proposed declaratory ruling at least five days prior to the date the Commission will consider the declaratory ruling; such comments shall be provided to the Commission and shall be included in the record of the declaratory ruling.
- (d) The parties to a declaratory ruling shall be allowed 30 minutes to present oral arguments to the Commission. Unless the Division of Coastal Management waives the opportunity to be heard, it shall be a party to any request for declaratory ruling. No party may offer testimony or conduct cross-examination before the Commission.

History Note: Authority G.S. 113A-124; 150B-4;

Eff. November 30, 1992.

15A NCAC 07J .0605 PETITIONS FOR RULEMAKING

- (a) Any person wishing to request the adoption, amendment, or repeal of a rule shall make this request in a petition addressed to the Division of Coastal Management. The petition shall specify it is filed pursuant to G.S. 150B-20 and shall contain the following information:
 - (1) either a draft of the proposed rule or a summary of its contents;
 - (2) a statement of reasons for adoption of the proposed rule(s);
 - (3) a statement of the effect on existing rules or orders;
 - (4) any data in support of the proposed rule(s);
 - (5) a statement of the effect of the proposed rule on existing practices; and
 - (6) the name and address of the petitioner.
- (b) The petition will be placed on the agenda for the next regularly scheduled commission meeting, if received at least four weeks prior to the meeting, and the director shall prepare a recommended response to the petition for the Commission's consideration. Petitions will be considered in accordance with the requirements of G.S. 150B-20.

History Note: Authority G.S. 113A-124; 150B-20; Eff. January 1, 1989;

Amended Eff. October 1, 1992.